IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2436 OF 2006

Hajraben Mohamed Patel & ors. ... Petitioners

V/s

Gulam Rasool Ahmed & ors. ... Respondents

Shri P.K Dhakephalkar with J.G. Reddy for the petitioners.

Shri Ashok G. Toraskar for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 25TH APRIL, 2006

P.C.:

1. Heard learned advocate for both parties. Perused the record.

2. The petitioners have moved this petition against the judgment and order passed by the lower appellate Court dated 17.12.2005 dismissing the appeal and confirming the judgment and order passed by the Execution Court in the Misc. Notice No. 741 of 2001 in R.A.E. & R. Suit No. 437/1321 of 1981 which partly allowed the application under Sec. 74 of the Code of Civil

Procedure.

3. The brief history of the dispute between the parties appears to be that, the respondent plaintiffs obtained the decree for possession of the suit premises against the present petitioners i.e. who are defendant Nos. 3A to 3J and said decree attained the finality when the Writ Petition No. 380 of 2001 was dismissed and consequently S.L.P. being No. 4959 of 2001 was also dismissed by the Apex Court. Consequently execution proceeding was preferred wherein application for issue of warrant of possession came to be issued. The possession warrant was issued and date of execution was fixed on 3rd October, 2001. Since the premises were found to be locked, the time was fixed for execution on a particular day. In the meantime, the present petitioner defendants preferred three separate applications being Notice Nos. 623 of 2001, 624 of 2001 and 629 of 2001 before the Executing Court, however, in vain. In the meantime, the present petitioners have filed R.A.D. Suit (St.) No.2667 of 2001 on 1.10.2001 and also made an application for ex-parte ad-interim relief which was granted in terms that, injunction was granted not to dispossess the present petitioners except by due process of law. It is needless to mention that

the execution of the decree was in fact a due process of law and, therefore, the said temporary injunction was of no consequence. On this back ground when it was found that the decree could not be executed, the application under Sec. 74 of the Code of Civil Procedure came to be made on the ground that the decree was being resisted unlawfully and, therefore, it was prayed that the defendants/judgement-debtors be tendered in civil prison after execution of the decree.

The Execution Court, after hearing both parties, on the basis of available evidence, came to the conclusion that the decree should be executed by other convenient modes without further delay and hindrance but for that it was not necessary that the petitioners should be imprisoned in civil prison under Sec. 74 of the code of Civil Procedure. The matter was taken to the lower appellate Court. The lower appellate Court, after hearing both parties, found that the order passed by the execution Court was legal and proper and, therefore, dismissed the appeal and hence the present petition.

4. At the outset, it may be noted that my attention was invited to the reply filed by the present petitioners to the application under Sec. 74 of the Code of Civil

Procedure. Perusal thereof shows that the things which are pleaded therein, are in terms of history of the dispute before the decree was passed and, therefore, it is needless to mention that the execution Court was not empowered to go in those aspects behind the decree and under the circumstances those contentions raised on behalf of the present petitioners were of no legal consequence.

5. On perusal of the order passed by both the Courts below it is found that the concurrent findings recorded by both the Courts below appears to be just, legal and proper and it would not be prudent to invoke the powers of this Court contemplated by Art. 227 of the Constitution of India.

6. In the result, the petition appears to be devoid of any merits and stands dismissed with no order as to costs.

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